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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,225	11/17/2003	Antonio Marchetti	P69273US0	2465
136	7590	07/15/2004	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/713,225

**Applicant(s)**

MARCHETTI, ANTONIO

**Examiner**

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03192004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The disclosure is objected to because of the following informalities: applicant need to insert headings such as "BACKGROUND OF THE INVENTION"; "BRIEF SUMMARY OF THE INVENTION"; etc.

Appropriate correction is required.

A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the rear flap" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the upper flaps" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the type" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the two" in line 4. There is insufficient antecedent basis for this limitation in the claim.

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Claim 1 recites the limitation "the above-mentioned" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the same feed direction" in line 14. There is insufficient antecedent basis for this limitation in the claim.

(claim 1, line 19) "...an angular position suitable for meeting its inclined surface,..." is vague and unclear what applicant is referring to as of what is "its inclined surface"; etc.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, and 4 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Marchetti (4,218,862).

Marchetti discloses a device for closing the rear flap in a machine for closing the upper flaps of parallelepiped boxes of the type comprising a base (Fig. 1; via base 2) with support surface for the boxes (26), a couple of drive belts (Figs. 1 and 2; via belts 3 on both sides of the base) that can be motorised placed at the two sides of said support surface and that can be brought close to each other to make a drive engagement with the sides of the boxes (Fig. 5), a head above said support surface (Fig. 1; via frame 6), that carries devices for closing the front, rear and side flaps of the boxes (Fig. 1; via closure member 15) and can be commanded to descend from a rest position to engage the above-mentioned devices with the upper flaps of the boxes and provide for closing them (Figs. 1, 8, and 9), and means for detecting the position (Fig.

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1; via sensor 30) of the boxes for the automatic command of the movements of the machine , characterised in that it comprises a rod (Fig. 16; via the closure member 15) for straightening the rear flap (Fig. 9; via rear flap 28), that is pivoted on said head (6) and can be commanded to rotate from a substantially horizontal rest position to a vertical working position (Figs. 7-9) and to translate in the same feed direction of the box (column 2, lines 14-16) to carry out the straightening of the rear flap, a vertically mobile touching group (Fig. 1; via adjustable hand 5) that can be commanded to descend towards said support surface up to a position depending on the height of the box (column 3, lines 9-11) and a lever (Fig. 16; via support 12) pivoted on said touching group downstream from said straightening rod and flexibly kept in an angular position suitable for meeting its inclined surface, during the descent of the touching group, the straightened rear flap and thus to cause the movement of the flap in closing position (Figs. 15 and 16). Note that in line 10 of claim 1 “the dimensions” which is not positively cited on the body of the claim, therefore it was not given much patentable weight.

Regarding claim 3: the lever (12) is flexibly kept in said angular position by a pneumatic cylinder (Fig. 16, via 13).

Regarding claim 4: the lever is L- shaped (Fig. 16; via L-shape lever 12) with a first arm forming said inclined surface (Fig. 16; via the arm with spring 25) and a second arm connected to the pneumatic cylinder (Fig. 16; via the arm with spring 19).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marchetti (4,218,862).

Marchetti does not disclose that the head is fitted with means for detecting the height of the boxes in input with flaps open. However, Marchetti discloses frame or head 6 is height adjustably via hand wheel 5 (column 3, lines 9-11) and also discloses sensor 30 for sensing the boxes (Figs. 1 and 5). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Marchetti's device for closing the rear flap by having the head is fitted with means for detecting the height of the boxes in input with flaps open, in order to detect the height of the box and as a result adjusting the height of the head 6 automatically, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Le 5685814, Barbulesco 5115625, Nigrelli 4317320, Loveland 4041675, Johnson 3981122, Poulsen 3894380, Devan 3775937, and Romney 3267640 disclose different device for closing box flaps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sameh H. Tawfik  
Patent Examiner  
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A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned below the printed name of the examiner.

ST.